

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN SECTION

DONALD P. MULLER,

Plaintiff,

vs.

POLICE OFFICER JOSE TORRES,  
et al.,

Defendants.

C. A. No. 3:04-CV-30185-KPN

U.S. DISTRICT COURT  
DISTRICT OF MASS.

2005 MAR -4 P 2:12

FILED  
IN CLERK'S OFFICE

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION  
TO DISMISS FOR FAILURE TO COMPLY WITH ORDER OF THE COURT AND  
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

I.  
PRELIMINARY STATEMENT

In 1997 Donald P. Muller, Plaintiff in the above-stated civil action, filed with the United States District Court for the District of Massachusetts a Complaint asserting claims against the Commonwealth of Massachusetts and the Westfield Police Department. See Exhibit "A" attached hereto, Civil Docket for Case #: 97-CV-10547. In that Complaint Mr. Muller asserted that on November 27, 1992 Westfield Police Officers McCabe, Coach, O'Brien, Torres and Samataro engaged in conduct that caused him injury and caused him to be charged with a criminal offense which was dismissed upon a finding of not guilty after a trial held on May 21, 1993. See Exhibit "B" attached hereto, Complaint in Civil Action No. 97-CV-10547.

Mr. Muller submitted with the 1997 Complaint an Application To Proceed Without Prepayment of Fees. See Exhibit "C" attached hereto, a copy of same. By